

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DONROY WALKER,

Petitioner,

1:09-cv-1414-CL

v.

ORDER

MARK NOOTH,

Respondent.

PANNER, District Judge:

Magistrate Judge Mark D. Clarke filed Findings and Recommendation, and the matter is now before this court. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). When either party objects to any portion of a Magistrate Judge's Findings and Recommendation, the district court must make a de novo determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F. 2d 1309, 1313 (9th Cir. 1981).

Here, petitioner objects to the Findings and Recommendation. I have, therefore, given this matter de novo review. Here, the state court found petitioner was not in custody for Miranda purposes when police questioned him. I agree with Magistrate Judge Clarke that the state court's ruling is not an objectively unreasonable application of Supreme Court precedent.

Accordingly, I ADOPT the Findings and Recommendation of Magistrate Judge Clarke.

CONCLUSION

Magistrate Judge Clarke's Findings and Recommendation (#45) is adopted. The amended petition (#6) is denied and this action is dismissed. Because defendant has made a substantial showing of the denial of a constitutional right, a certificate of appealability will be granted if petitioner appeals.

IT IS SO ORDERED.

DATED this 10 day of May, 2012.



OWEN M. PANNER
U.S. DISTRICT JUDGE